



CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Daniel Lopez,
Plaintiff,

v.

Dhyana LLC, a California Limited
Liability Company;
Hema Patel; and Does 1-10,
Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act;
California Disabled Persons Act;
Negligence**

Plaintiff Daniel Lopez complains of Defendants Dhyana LLC, a
California Limited Liability Company; Hema Patel; and Does 1-10
("Defendants") and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is
substantially limited in his ability to walk. He is a paraplegic who uses a
wheelchair for mobility.

2. Defendant Hema Patel owns and operates the Dynamite Motel
("Motel"), located at or about 800 E. Manchester Avenue, Los Angeles,

1 California, now and did so in December 2013.

2 3. Defendant Dhyana LLC owns the property located at or about 800 E.
3 Manchester Avenue, Los Angeles, California, now and did so in December
4 2013.

5 4. Plaintiff does not know the true names of Defendants, their business
6 capacities, their ownership connection to the property and business, or their
7 relative responsibilities in causing the access violations herein complained of,
8 and alleges a joint venture and common enterprise by all such Defendants.
9 Plaintiff is informed and believes that each of the Defendants herein,
10 including Does 1 through 10, inclusive, is responsible in some capacity for
11 the events herein alleged, or is a necessary party for obtaining appropriate
12 relief. Plaintiff will seek leave to amend when the true names, capacities,
13 connections, and responsibilities of the Defendants and Does 1 through 10,
14 inclusive, are ascertained.

15
16 **JURISDICTION & VENUE:**

17 5. This Court has subject matter jurisdiction over this action pursuant to
18 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans
19 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

20 6. Pursuant to pendant jurisdiction, an attendant and related cause of
21 action, arising from the same nucleus of operative facts and arising out of the
22 same transactions, is also brought under California's Unruh Civil Rights Act,
23 and the California Disabled Persons Act, which acts expressly incorporate the
24 Americans with Disabilities Act.

25 7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
26 founded on the fact that the real property which is the subject of this action is
27 located in this district and that Plaintiff's cause of action arose in this district.
28

FACTUAL ALLEGATIONS:

8. The Plaintiff went the Motel to stay the night in December of 2013.

9. The Motel is a facility open to the public, a place of public accommodation, and a business establishment.

10. Parking spaces are one of the facilities, privileges and advantages offered by defendants to their customers at the Motel.

11. Unfortunately, the parking lot does not have a compliant, accessible parking space.

12. Although parking is provided for guests at the Motel, there is not a single compliant handicap parking space at this location.

13. Plaintiff alleges that, on information and belief, an accessible parking space once existed at this location. However, the defendants have allowed the space to be paved over or fade beyond recognition.

14. Defendants have no policy or procedure whatsoever to maintain their rear parking lot so that its handicap-accessible parking spaces remain useable for disabled customers.

15. In addition to no parking, plaintiff alleges that the Motel does not have a handicap-accessible room.

16. The plaintiff personally encountered these problems. These inaccessible conditions denied the plaintiff full and equal access and caused him difficulty.

17. Additionally, on information and believe, the plaintiff alleges that the failure to remove these barriers was intentional because: (1) these particular barriers are intuitive and obvious; (2) the defendants exercised control and dominion over the conditions at this location and, therefore, the lack of accessible facilities was not an "accident" because had the defendants intended any other configuration, they had the means and ability to make the change.

I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (On behalf of plaintiffs and against all defendants (42 U.S.C. section 12101, et seq.)

18. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

19. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADAAG, found at 28 C.F.R., Part 36, Appendix "D."
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by

1 individuals with disabilities. 42 U.S.C. § 12183(a)(2).

2 20. To qualify as a reserved handicap parking space, the space must be
3 properly marked and designated. Under the ADA, the method and color of
4 marking are to be addressed by State or local laws or regulations. See 36
5 C.F.R., Part 1191, § 502.3.3. Under the California Building Code, to
6 properly and effectively reserve a parking space for persons with disabilities,
7 each such space must be identified with a reflectorized sign permanently
8 posted adjacent to and visible from each stall or space. CBC § 1129B.4. The
9 sign must consist of the International Symbol of Accessibility in white on a
10 blue background. Id. It cannot be smaller than 70 square inches and must be
11 mounted so that there is a minimum of 80 inches from the bottom of the sign
12 to the parking space. Id. Signs must be posted so that they cannot be obscured
13 by a vehicle parking in the space. Id. An additional sign or additional
14 language below the symbol of accessibility must state, "Minimum Fine
15 \$250" to ensure that the space remains available for persons with disabilities.
16 Id. Another sign must be posted in a conspicuous place at the entrance to the
17 parking lot or immediately adjacent to each handicap parking space, with
18 lettering 1 inch in height, that clearly and conspicuously warn that
19 unauthorized vehicles parking in the handicap parking spaces can be towed at
20 the owner's expense. Id. Additionally, the surface of the handicap parking
21 stall must have a profile view of a wheelchair occupant that is 36 inches by 36
22 inches. Id. And the surface of the access aisle must have a blue border. CBC §
23 1129B.3. The words "NO PARKING" in letters at least a foot high must be
24 painted on the access aisle. Id.

25 21. Here, there is no accessible parking whatsoever.

26 22. Defendants have no policy or procedure whatsoever to maintain their
27 parking lot so that disabled customers have a place to park.

28 23. When transient lodging is provided, i.e., motels, hotels and similar

1 establishments, there must be a certain number of accessible sleeping rooms
2 or suites. 1991 Standards § 9.1.2. Indeed, a Motel with between one and 25
3 rooms must have one room that is handicap accessible.

4 24. In our case, none of the rooms are handicap accessible at the Motel.
5 This is a violation of the law.

6 25. The Defendants are persons who own, operate, lease or lease to a place
7 of public accommodation. As such, the Defendants are required to ensure
8 that persons with disabilities are not discriminated against and, additionally,
9 have specific duties to (1) ensure that all construction, alteration, or
10 modification is barrier free and complies with the Americans with Disabilities
11 Act Accessibility Guidelines (“ADAAG”); and/or (2) remove all existing
12 barriers where such removal is “readily achievable,” and/or (3) to provide
13 alternatives to barrier removal. The Defendants have failed to meet these
14 obligations.

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16 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
17 **RIGHTS ACT** (On behalf of plaintiffs and against all defendants) (Cal Civ §
18 51-53)

19 26. Plaintiff repleads and incorporates by reference, as if fully set forth
20 again herein, the allegations contained in all prior paragraphs of this
21 complaint.

22 27. Because the defendants violated the plaintiffs’ rights under the ADA,
23 they also violated the Unruh Civil Rights Act and are liable for damages. (Civ.
24 Code § 51(f), 52(a).)

25 28. Because the violation of the Unruh Civil Rights Act resulted in
26 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are
27 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §
28 55.56(a)-(c).)

1 **III. THIRD CAUSE OF ACTION: VIOLATION OF THE CALIFORNIA**
 2 **DISABLED PERSONS ACT** (On behalf of plaintiffs and against all
 3 defendants) (Cal Civ. § 54-54.8)

4 29. Plaintiff repleads and incorporates by reference, as if fully set forth
 5 again herein, the allegations contained in all prior paragraphs of this
 6 complaint.

7 30. Because the defendants violated the plaintiffs' rights under the ADA,
 8 they also violated the Disabled Persons Act and are liable for damages. (Civ.
 9 Code § 54.1(d), 54.3(a).)

10 31. Because the violation of the Disabled Persons Act resulted in difficulty,
 11 discomfort or embarrassment for the plaintiffs, the defendants are also each
 12 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
 13 (c).)

14
 15 **IV. FOURTH CAUSE OF ACTION: NEGLIGENCE** (On behalf of plaintiff
 16 and against all defendants)

17 32. Plaintiff repleads and incorporates by reference, as if fully set forth
 18 again herein, the allegations contained in all prior paragraphs of this
 19 complaint.

20 33. The Defendants had a general duty and a duty arising under the
 21 Americans with Disabilities Act and the Unruh Civil Rights Act and
 22 California Disabled Persons Act to provide safe, convenient, and accessible
 23 facilities to the plaintiffs. Their breach of this duty, as alleged in the preceding
 24 paragraphs, has caused injury and damage as alleged above.

1 **PRAYER:**

2 Wherefore, Plaintiff prays that this court award damages and provide
3 relief as follows:


4 1. For injunctive relief, compelling defendants to comply with the
5 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
6 Plaintiffs are not invoking section 55 of the California Civil Code and is not
7 seeking injunctive relief under the Disabled Persons Act at all.

8 2. Damages under the Unruh Civil Rights Act and/or the California
9 Disabled Persons Act which damages provide for actual damages and a
10 statutory minimum of \$4,000. Note: a plaintiff cannot recover under both
11 acts, simultaneously, and an election will be made prior to or at trial.

12 3. Reasonable attorney fees, litigation expenses and costs of suit,
13 pursuant to 42 U.S.C. § 12205; Cal. Civ. Code §§ 52 and 54.3.

14
15 Dated: February 28, 2014

CENTER FOR DISABILITY ACCESS

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17 By: 
18 Mark Potter, Esq.
19 Attorneys for Plaintiff
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